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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement, Jr.

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## DIGEST

Perry (SB 687)

Present law provides relative to the crime of operating a vehicle while intoxicated and provides penalties.

Present law provides that on a first conviction of operating a vehicle while intoxicated, the offender is to be fined not less than \$300 nor more than \$1,000, and imprisoned for not less than 10 days nor more than six months. Present law further provides that imposition or execution of sentence can be suspended under certain circumstances.

Proposed law provides that the offender is to be fined not less than \$300 nor more than \$1,000, and imprisoned for not less than 48 hours nor more than six months, and undergo an evaluation by the Dept. of Health and Hospitals (DHH) and, at the court's discretion, participate in any treatment program recommended by DHH. Proposed law further provides that first offenders who are placed on probation under certain circumstances are also required to undergo an evaluation by DHH. Proposed law further provides that at least 48 hours of the sentence of imprisonment must be served without benefit of probation, parole, or suspension of sentence. Proposed law further provides that the remainder of the sentence cannot be suspended unless certain conditions relative to evaluation and treatment are met.

Present law provides that on a first conviction, in addition to other present law penalties, if the offender had a blood alcohol concentration of 0.15 percent or more, then at least 48 hours of the sentence must be served without the benefit of parole, probation, or suspension of sentence, and imposition or execution of the remainder of the sentence cannot be suspended unless the offender complies with certain provisions of present law.

Proposed law provides that on a first conviction, if the offender had a blood alcohol concentration of 0.15 percent or more, he is to be fined not less than \$500 nor more than \$1,000, and imprisoned for not less than three days nor more than six months. Proposed law further provides that three days of the sentence of imprisonment must be imposed without benefit of probation, parole, or suspension of sentence.

Present law provides that on a first conviction, in addition to other present law penalties, if the offender had a blood alcohol concentration of 0.20 percent or more, then the offender shall be fined not less than \$750 nor more than \$1,000, and at least 48 hours of the sentence imposed must be served without the benefit of parole, probation, or suspension of sentence, and imposition or execution of the remainder of the sentence cannot be suspended unless the offender complies with certain provisions of present law.

Proposed law provides that on a first conviction, if the offender had a blood alcohol

concentration of 0.20 percent or more, he is to be fined not less than \$750 dollars nor more than \$1,000, and imprisoned for not less than five days nor more than six months. Proposed law further provides that five days of the sentence of imprisonment must be imposed without benefit of probation, parole, or suspension of sentence.

Proposed law provides that on a conviction of a first offense when the crime of vehicular homicide or first degree vehicular negligent injuring occurs, the offender is to be imprisoned with or without hard labor for not less than one year nor more than five years, without benefit of probation, parole, or suspension of sentence, and is to be fined \$2,000. Proposed law further provides that the offender must immediately undergo an evaluation by DHH to determine the nature and extent of the offender's substance abuse disorder and the offender must participate in any treatment plan recommended by DHH.

Present law provides that on a conviction of a second offense of operating a vehicle while intoxicated, and regardless of whether the second offense occurred before or after the first conviction, the offender is to be fined not less than \$750 nor more than \$1,000, and is to be imprisoned for not less than 30 days nor more than six months. Present law further provides that at least 48 hours of the sentence is to be served without benefit of parole, probation, or suspension of sentence. Present law further provides that the offender may be sentenced to home incarceration, and provides that imposition or execution of sentence can be suspended under certain circumstances.

Proposed law provides that on a second conviction, the offender is to be fined not less than \$1,000 nor more than \$2,000, and imprisoned for not less than 30 days nor more than six months. Proposed law further provides that persons convicted of a second offense must undergo an evaluation by the DHH to determine the nature and extent of the offender's substance use disorder and to participate in any treatment program recommended by the office, which may include either treatment in an inpatient facility or substance abuse treatment in an alcohol and drug abuse program provided by a drug division pursuant to present law. Proposed law further provides that at least 15 days of the sentence of imprisonment is to be served without benefit of parole, probation, home incarceration, or suspension of sentence. Proposed law further provides that upon completion of the portion of the sentence that cannot be suspended, the offender may serve home incarceration if otherwise eligible for home incarceration under present law. Proposed law further provides that the remainder of the sentence cannot be suspended unless certain conditions relative to evaluation and treatment are met. Proposed law further provides that second offenders who are placed on probation under certain circumstances are also required to undergo an evaluation by DHH.

Proposed law provides that the evaluation required by proposed law is to be conducted by DHH or by a licensed mental health professional, either as an independent practitioner or as an employee of a provider agency, acting within the scope of his practice, to determine the nature and extent of the offender's substance use disorder. Proposed law further provides that DHH is to maintain information regarding best practices for the treatment of such substance use disorders, and is to publish such information on its website. Proposed law further provides that each licensed mental health professional conducting the evaluation required by this Paragraph is

to follow the best practices published by DHH.

Proposed law provides that DHH is to establish and maintain on its website a registry of licensed mental health professionals who are willing to provide such evaluation services.

Proposed law provides that the licensed mental health professional is to recommend a treatment plan based upon the evaluation, and the offender must comply with such treatment plan.

Proposed law further provides that any treatment plan recommended may include either treatment in a licensed inpatient or residential facility or participation in substance abuse treatment in an alcohol and drug abuse program provided by a drug division subject to the applicable provisions of present law, if the offender is otherwise eligible to participate in such program.

Proposed law provides that it is the offender's responsibility to obtain the evaluation and treatment plan, and all costs of evaluation and treatment will be borne by the offender, unless the offender has been declared indigent.

Proposed law otherwise retains present law.

Present law provides that on a conviction of a third offense of operating a vehicle while intoxicated, the offender is to be imprisoned with or without hard labor for not less than one year nor more than five years and fined \$2,000. Present law further provides that one year of the sentence of imprisonment is to be imposed without benefit of probation, parole, or suspension of sentence.

Proposed law provides that on a third conviction, the offender is to be imprisoned, with or without hard labor, for not less than three years nor more than 10 years and fined \$2,000.

Proposed law otherwise retains present law.

Present law provides that persons convicted of third and fourth and subsequent offense operating a vehicle while intoxicated who are placed on probation, in addition to other present law requirements, are required to either undergo an evaluation by the DHH to determine the nature and extent of the offender's substance abuse disorder and to participate in any treatment plan recommended by DHH, including treatment in an inpatient facility approved by the office, or to participate in substance abuse treatment in an alcohol and drug abuse program provided by a drug division pursuant to present law.

Proposed law retains present law, and adds that it is the responsibility of the offender to obtain the evaluation and treatment, and to bear all costs of evaluation and treatment unless the offender has been declared indigent.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 14:98(B)(1) and (2), (C)(1) and (3), (D)(1)(a) and (b)(i), and (E)(1)(b)(i); adds

R.S. 14:98(B)(3), (C)(4), (D)(4), and (E)(5))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Deletes provisions that no part of the sentence of imprisonment for first offense DWI under various circumstances can be suspended.
2. Adds provisions requiring that a certain period of the sentence of imprisonment for first offense DWI under certain circumstances must be served without benefit of probation, parole, or suspension of sentence.
3. Deletes provisions that no part of the sentence of imprisonment for second offense DWI can be suspended.
4. Adds provisions requiring substance abuse evaluation and treatment for second offense DWI.
5. Deletes provision that no part of the sentence of imprisonment for third offense DWI can be suspended.
6. Deletes provision that no part of the sentence of imprisonment for fourth offense DWI can be suspended.